IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8231 OF 2007

Enid A. Hayden ...Petitioners

Versus

Clifford Rodrigues & anr. ....Respondents

Mr.Narula for the petitioners.

Mr.S.K.Jain for the respondents.

CORAM: S.C.DHARMADHIKARI, J.

5th December, 2007.

P.C. :

1. After this matter was argued for some time, it was brought to the notice of Mr.Narula, that the plea raised before me that the Application made by the respondents before the Trial Court is time barred having not been raised either before the Trial Court or before the Appellate bench, he fairly concedes that position. However, he submits that this issue can be raised for the first time in this Writ petition.

2. To my mind, the issue is not purely legal. The issue of limitation is a mixed question and in the facts of the present case, when no plea was raised with regard to the application itself being time barred, it would not be fair, just and proper to allow Mr.Narula to raise these objections in the Writ Petition.

3. Insofar as the decree passed against the present petitioner is concerned, the courts below proceed on the basis that an officer of the court was appointed and a conveyance has been executed in favour of the contesting respondents. In such circumstances, the locus of the said respondents/applicants to maintain the application for execution also cannot be entertained.

4. From a perusal of the order passed by the courts below, all that is urged is that the decree passed in the suit for specific performance instituted against the present petitioner is not capable of being executed and enforced. Naturally, that plea could not have been gone into in the subject proceedings. In such

circumstances, even otherwise I find that this is not a fit case for interfering with the orders under challenge in my jurisdiction under Article 227 of the Constitution of India. Petition is accordingly dismissed.

5. However, the orders under challenge do not prevent the petitioners from taking out appropriate proceedings and raise therein all such pleas as are permissibe in law with regard to the enforceability and executability of the decree of specific performance passed against them. Petition dismissed. No order as to costs.

sd/-

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